



Arizona Electric Power Cooperative, Inc.

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January 30, 2004

Ms. Jean Gray
Assistant Regional Manager for Power Marketing
Western Area Power Administration
P.O. Box 6457
Phoenix, AZ 85005-6457

**RE: PROPOSED SECTION 12 (TRANSFER OF INTEREST IN CONTRACT) TO DRAFT
AMENDMENT NO. 1 (Prototype Rev. 2, 1/16/2004) TO CONTRACT NO. 87-BCA-
10085**

Dear Ms. Gray:

Arizona Electric Power Cooperative, Inc. (AEPCO) offers the following comments on the proposals contained in the Prototype Amendment distributed at Western's January 16, 2004 meeting and the various changes to that language proposed at the meeting.

We cannot support those proposals for a number of reasons, foremost among them the ambiguity of meaning evident by the questions and comments of those in attendance – there seemed to be as many interpretations as participants. Second, the language appears to give relatively unfettered discretion to the Administrator, discretion which the word “reasonably” does little to rein in. We share the concern of other PD-P customers that “including but not limited to” preceding the examples is too expansive and introduces uncertainty in what is to be a firm electric service agreement. The language could be interpreted by our various lending agencies or bond trustees as too uncertain to support opinions of counsel. This adds unnecessary risk at a time when the electric industry is facing its toughest credit requirements ever.

In addition, while it appears that Western's policy over many years has been to promote aggregation of power loads, we believe the contract section first presented in the December 22, 2003 version and the alternatives proposed on January 16, 2004 will have the opposite effect. It tends to encourage disintegration by providing an easy way out.

For all these reasons, we fully support and strongly urge Western to use the language which appears below, which we sent you last week. As you know, it is the result of hard work, accommodation and compromise among your customer community. We believe it meets the objectives stated by

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Western in the January 16 meeting to give the Administrator flexibility to act in certain situations which may otherwise result in inequity. It is clear in meaning. Further, it preserves the certainty of a firm electric contract by specifying the parameters for re-examination and adjustment and so provides a measurement for risk. Thus, it aids responsible long term planning for reliability and load growth. The language we support is:

“In addition to the provisions of Section 37 of the General Power Contract Provisions and notwithstanding any other provision of the contract to the contrary, Western’s Administrator reserves the right to reexamine and adjust Western’s firm electric service obligations under this contract as the Administrator deems reasonably appropriate, if, where applicable, the Contractor’s contractual obligation to supply electricity to a preference entity or preference entities after execution of this contract amendment is materially diminished as a result of a change in the Contractor’s status by reason of: (1) the Contractor’s merger with another organization, (2) its acquisition of or being acquired by another organization, (3) its creating a new organizational entity from an existing one (4) joining or withdrawing from or contractually restructuring its membership in a membership-based power supply organization, or (5) if the Contractor is a membership-based power supply entity (such as a generation and transmission cooperative), terminating its contractual relationship with one or more members from its membership organization resulting in a significant reduction in remaining load measured against the criteria used by the Administrator in approving the Contractor’s allocation.”

We agree with the sentiment we expect to be expressed by Western’s other customers that if this language is not acceptable to Western, then Western should return to the CRSP Version included in Amendment 5 to the CRSP contracts. As AEPCO indicated in its January 15, 2004 letter to you, its Board of Directors has unanimously agreed to that version. While AEPCO would prefer the customer agreed to solution above, the CRSP Version at least avoids the uncertainty and risk contained in the January 16 proposal. It has been in use without bad result since 1998. Its use will provide Western with consistency of language and result in its agreements, an important consideration in contract administration, which reduces the potential for varying application and conflicting judicial interpretations. In addition, the record will show it is acceptable to the majority of Western’s contractor base.

On Friday, January 23, Western indicated neither the customer supported language nor the CRSP Version is acceptable. Our understanding is that Western is still deliberating and anticipates sending

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a new draft of language to its contractors. We urge Western not to unilaterally adopt some other alternative and present it to its customers as it indicated in the January 16 meeting. We believe it unfair for us to be presented a contract for execution which is not the product of discussion, public comment and consensus. We ask that Western continue to work with its customer group to ensure that result on this late-raised issue and we look forward to the opportunity to consider and comment on any forthcoming revised draft language.

Very truly yours,

/s/ Patricia E. Cooper

Patricia E. Cooper
Chief Legal Officer

c/ AEPCO Board of Directors
Michael Curtis, Esquire
Tom Hine, Esquire
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